Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT AINITAL.

Appeal against Order No. 91 of 2003

United India Insurance Company Ltd.
through its Divisional Manager, Divisional
Office, Tikonia, Nainital Road, Haldwani,
District – Nainital.

..... Opp.party/appellant

Versus

1.Hukum Singh Solanki S/o Sri Bhola Singh,
R/o Kanharwala, P.O.Bhaniawala,
Dehradun- District-Dehradun,

.....Claimant/Respondent.

2.Smt.Kalawati Devi Bidalia
W/o Sri Sachidanand.
R/o Kashirampur, Kotdwara,
District-Pauri Garhwal.
3.Matwar Singh through
Smt.Kalawati Devi Bidalia,
R/o Kashirampur, Kotdwara,
District-Pauri Garhwal.
4.Sri Hukum Singh S/o Sri Khusal Singh,
R/o Village-Chidrawala, P.O.Chidrawala,
Near Inter College, District-Dehradun.
5.Oriental Insurance Co. Ltd.
through Branch Manager,
Oriental Insurance Co.Ltd.
Branch Office-Dehradun Road,
Rishikesh, District – Dehradun.

.....Opp.party/Respondents

Sri Naresh Pant, learned counsel for the claimant/appellant,
Sri B.P.Nautiyal & Sri T.A. learned counsel for the respondents.

Date: 25th Aug.,2004

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the appellant under Sec. 173 of the Motor Vehicles Act against the award dated 24.01.2003 passed by Motor Accident Claims

Tribunal/Addl. District Judge, Dehradun in Motor Accident Claim Petition No. 14 of 2001, whereby the claim petition has been allowed for grant of Rs.,6,08,969/- against the appellant-insurer of the offending vehicle bus No. UP 05-0051.

2- Brief facts giving rise to this appeal are that on 27.8.2000 deceased Smt. Vimla Solanki was travelling in Ambassador Car No. UP-07C-6220 from Dehradun for going to participate in Nanda Devi Raj Jaat Yatra. When the said car reached near village-Bagwan, within the Patwari circle – Hisariakhal, District-Tehri Garhwal, at about 9.30 a.m., bus No. UP-05-0051 which was coming from opposite direction and was being driven rashly and negligently by its driver opp.party No.3- Matber Singh dashed the said Ambassador Car. Due to this collision deceased Smt. Vimla Solanki received injury on her head and died on the spot. She was aged 56 years at the time of accident. The deceased was employed under the employment of Zila Basic Education Officer, Dehradun as a Teacher and was drawing a monthly total salary of Rs. 9,471/-. The claimant-husband of the deceased filed the claim petition before the Tribunal for grant of Rs. 8,70,000/- due to death of his wife on the head of different counts.

3- The Opp. Party Nos. 1 & 4, insurer of the offending bus and the owner of the Ambassador Car respectively contested the case by filing their separate written statements. The Opp. Party No.1 pleaded that driver of bus No. 05-0051 was not having a valid driving licence at the time of accident. The Opp. Party No.4 –owner of the Ambassador Car No.07-6220 pleaded that the accident occurred due to rash and negligent driving of the driver of offending bus. The Tribunal on the pleadings of

the parties framed necessary issues, recorded evidence of the parities and allowed the claim petition accordingly.

4- The learned counsel for the appellant challenged the impugned award and contended that the learned Tribunal having arrived at the conclusion that the accident occurred on account of sole negligence of the driver of offending bus and erred in not dividing the contributory negligence equally on both the vehicles. We have gone through the entire material on record and perused the impugned judgment. The argument advanced by the learned counsel for the appellant is misconceived. The Tribunal while deciding issue No.1 held that the alleged accident occurred due to rash and negligent driving of driver of bus No. UP 05-0051 and while deciding issue No.3 which was on the point of contributory negligence gave its finding that there is no evidence on record on the basis which the driver of Ambassador Car No. UP 07-C-6220 could be held liable equally for the accident. On the contrary, P.W.1 Hukum Singh Solanki has stated in his statement on oath that when the driver of offending bus was driving the bus rashly and negligently the driver of Ambassador Car parked it on his extreme side. It is clear from the evidence of this witness that the driver of Ambassador Car was vigilant and did not commit any mistake. We find that on the basis of said evidence the learned Tribunal has rightly held that the insurer of vehicle bus no. UP 05-0051 is liable to pay the amount of compensation.

5- The learned counsel further contended that there is breach of policy conditions as the vehicle insured with the Opp.party No.5 i.e. Ambassador Car No. UP 07-C-6220 was plying without route permit as well as the driver has no valid driving licence on the date of accident. The

Tribunal has not framed any issue on the said pleading and has not given any finding. This contention of the learned counsel for the appellant has also no force and is misconceived. In this regard the Tribunal framed issue No.2 and held that Photostat copy of the driving licence has been filed on the basis of which it can safely be said that the driver of the offending vehicle was having a valid driving licence. No evidence to rebut the same was adduced by the Insurance Company under Order 41 Rule 27 of the C.P.C. in the appeal regarding the driving licence nor it was pressed seriously before the Tribunal. The Tribunal has also held in the finding of issue No.1 that the accident occurred due to rash and negligent driving of offending bus No. UP 05-0051. In view of this clear cut finding of the Tribunal, it does not lie in the mouth of the appellant to reiterate the matter before this Court. However, nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal.

7- Accordingly, the appeal has no force on merit and is dismissed. The impugned judgment and award is upheld. No order as to costs. The amount, if deposited in the appeal in this Court, shall be remitted to the Motor Accident Claims Tribunal concerned within a period of three months from today.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh